

A Polish professional real estate intermediary's ethics after the deregulation of the profession

Aleksandra PIASECKA
Opole University, Opole, Poland

Abstract: In accordance with the legal rules that applied until the end of December 2013, the Polish real estate intermediary was obliged to perform in accordance with these rules as well as professional standards, with particular accuracy and care appropriate for the nature of the profession as well as the principles of professional ethics. On 13 June 2013 Polish Parliament adopted an Act amending the existing law on the exercise of certain professions, abolishing regulation of the profession of real estate intermediary or agent. From 1 January 2014, virtually all requirements became obsolete, like the need to possess a license, to possess proper education, the completion of an apprenticeship and the lack of a criminal record. The question arises how the real estate market coped with compliance with the law as well as professional standards and ethics. The aim of this article is to present proposals for new solutions in the area of professional standards for real estate intermediaries, in response to the changed markets conditions, and to compare the changes in the principles of professional ethics.

Keywords: real estate intermediary, professional ethics, professional standards, real estate market, professional deregulation

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1. Introduction

Ethics concerns a set of moral norms, as well as rules of conduct accepted by society. Professional ethics means a set of norms and standards that define certain moral obligations regarding the exercise of a profession within the context of social relations. Professionals are expected to be competent and behave in accordance with the moral standards (Bittner, Stępień 2000: 47).

Real estate intermediaries or agents play an important role in the real estate market. When functioning properly, they reduce different types of problems related to information, negotiation and enforcement of different contractual arrangements. However, due to different types of informational problems, incentives for lying and cheating may exist for intermediaries (Platje 2013), which may pose a threat to the functioning of the real estate market. One way to reduce this problem is a professional ethical code. The term "intermediary" should be associated with competence, honesty and integrity resulting from compliance with the law and professional ethics. Therefore, intermediaries should constantly strengthen and promote activities aimed at developing principles and standards of the profession. These principles should not only regulate the relationship between the client and the intermediary, but also protect the client, strengthen the essential market functions of the profession and provide incentives for responsible behavior by intermediaries.

In accordance with the provisions of the Law on Real Estate that applied until the end of December 2013,¹ the real estate intermediary was obliged to perform operations in accordance with the legal rules and professional standards, with particular attention to the professional nature of these activities and the principles of professional ethics. In addition, the intermediary was obliged also to apply the principle of his/her customers. The ethical rules and standards that applied to the profession stemmed from the generally accepted moral and ethical standards.

The rules of professional ethics for intermediaries had been developed and adopted based on the document "Standards of professional real estate agents" (*Standardy zawodowe pośredników w obrocie nieruchomościami*) created by the Polish Federation of the Real Estate Market (*Polska Federacja Rynku Nieruchomości*) in agreement with the Minister of Infrastructure.²

The Act amending the existing law on the exercise of certain professions, adopted on 13 June 2013 by Polish Parliament, abolished the regulation of the profession of real estate intermediary or agent. Since 1 January 2014, almost all existing requirements for real estate intermediaries ceased to exist. Examples are the possession of a license, proper education, apprenticeship and the lack of a criminal record. In the light of these changes, a question appears how the real estate market coped with compliance to the new law as well as professional standards and ethics.

¹ Ustawa o gospodarce nieruchomościami Dz.U. z 1997 r., Nr 115, poz. 741 z późn. zm., art. 181.

² Komunikat Ministra wydany 18 marca 2009 r. i opublikowany w Dzienniku Urzędowym Ministra Infrastruktury z dnia 23 kwietnia 2009 r. Nr 3, poz. 14 (Dz. Urz. MI nr 3, poz. 14).

In this paper, the implications of the legal changes for the professional standards of real estate intermediaries are presented and discussed, and an attempt is made to compare the changes in some fundamental principles of professional ethics.

2. Principles of professional ethics before and after deregulation

Professional ethics can be defined as the written standards corresponding to the question of how, from the moral point of view, representatives of the profession should or should not act (Lazari-Pawłowska 1992: 84). Another definition states that professional ethics consists of norms and moral judgements related to the activities being carried out in a certain profession, which are considered to be binding by the professional community, while not being codified like in the case of the Code of Medical Ethics (Bittner, Stępień 2000: 47).

It can be argued that professional ethics concerns the application of general moral standards, which are accepted in society, to the conditions of a specific professional situation. Different professions have different hierarchies of particular social values, meaning that the most important ethical norms are not necessarily the same.

Professional ethics appears in the form of institutionalized norms or standards (codes, oaths, vows) and the norms or standards formulated as individual proposals, which may have a loose structure or be a structured set of demands. Professional ethics aims at dealing with imperfections in professional practice. The importance of professional ethics differs per profession. It is of particular importance in professions where trust is important (Lazari-Pawłowska 1992: 84-91). This is the case when transactions concern high-value, complex goods such as real estate, or consequences of mistakes may be huge, like the loss of life while having a medical treatment. Ethical rules and norms facilitate decision-making in situations which are not covered by the legal system. As such, they do not provide specific answers or instructions, but provide guidance for creating proper relations between different partners in real estate transactions, which is important due to the fact that every type of real estate transaction is unique.

The professional standards for real estate intermediary being in force until the end of 2013 embraced rules obliging the agents to perform his/her job professionally and with dignity. The ethical principles were formulated in the form of do's and don'ts. The professional standards were

divided into different sections: Section I concerned principles of professional ethics, while Section II concerned professional standards. Section I consisted of 5 Chapters, being a set of generally accepted moral and ethical standards which should guide the professional intermediary (see Table 1).

Table 1. Professional standards of intermediaries on the real estate market
Section I – Principles of Professional Ethics

<p>Chapter 1 General principles</p>	<p>§ 1. The real estate agent, hereinafter referred to as the intermediary, should be guided by the principles of professional ethics. The rules of professional conduct of the intermediary arise from generally accepted moral and ethical standards.</p> <p>§ 2. The intermediary shall act in such a way as to protect the interests of the people, for whom intermediary services are provided, considering the principles of fair treatment of all parties to the transaction.</p> <p>§ 3. The intermediary should be loyal to the client and do not damage the mutual trust.</p>
<p>Chapter 2 Professional integrity</p>	<p>§ 4. The intermediary is obliged to comply with the law and professional standards.</p> <p>§ 5. The intermediary is obliged to act with due diligence in the performance of intermediary activities.</p> <p>§ 6. The intermediary is obliged to refuse intermediary activities which would be in conflict with the law or professional standards.</p>
<p>Chapter 3 Expertise and professionalism</p>	<p>§ 7. In the performance of intermediary services, the intermediary should respect the market trends.</p> <p>§ 8. The intermediary must not undertake intermediary activities that go beyond the scope of his knowledge and experience.</p>
<p>Chapter 4 Professional secrecy</p>	<p>§ 9. Information obtained by the intermediary related to the exercise of intermediary activities is a professional secret. In particular, the information obtained in the course of performing their duties may not be transferred to third parties. Secrecy does not apply to the transfer of information necessary for the proper performance of the service and information that may affect the security of the transaction.</p>
<p>Chapter 5 The prestige of the profession</p>	<p>§ 10. The intermediary shall ensure that relationship with other intermediaries is based on the principles of fair competition, loyalty and respect.</p> <p>§ 11. The intermediary should not act in a manner undermining the interests of entrepreneurs employing him. This concerns in particular the transmission, disclosure or use of information constituting a trade secret in the meaning of the Act of 16 April 1993 on counteracting unfair competition (Official Journal from 2003, no. 153, par. 1503, with later changes).</p> <p>§ 12. The intermediary is not allowed to execute instructions of its employer which are illegal or a breach of professional standards.</p> <p>§ 13. The intermediary is not allowed to disseminate false or misleading information about other intermediaries, about his own enterprise, about other entrepreneurs and enterprises, as well as their professional practices</p> <p>§ 14. The intermediary should support the activities of professional organizations and help to ensure a high status of the profession.</p>

	<p>§ 15. The intermediary should endeavor to eliminate in its surroundings practices which are in contradiction to the law and professional standards, or derogatory to dignity of the profession.</p> <p>§ 16. The intermediary is not allowed to use functions carried out in professional organizations for own benefit.</p>
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Source: *Standardy zawodowy pośredników ... (Professional standards of intermediaries ...)* (2009).

The deregulation of the profession of real estate intermediary, which came into effect on 1 January 2014, led to the mentioned abolition of state-licenses. While the formal rules guiding the profession changed (which is not the topic of this article) also professional standards changed (for a discussion on the old standards, see Piasecka 2012). In order to deal with the new challenges, the real estate intermediaries developed their own system of self-regulation. The new principles are in practice a continuation of the rules applying until 31 December 2013.

The (Polish) National Chamber of Real Estate Management (*Krajowa Izba Gospodarki Nieruchomościami*), being the largest organization associating real estate intermediaries in the country, created the Code of Ethics for Real Estate Intermediaries of the National Chamber of Real Estate Management. The aim of the Code of Ethics is to create uniform principles, norms and professional ethics. According to similar lines, it is aimed to create uniform conditions for the development and improvement of vocational education, professional standards and qualifications, both for members of the Chamber as well as other intermediaries in the real estate market. The Code of Ethics should support proper standards, professionalism and high level of customer service

The new Code of Ethics has been divided into 5 Chapters: Chapter I – general principles, definitions; Chapter II – professional prestige; Chapter III – customer relations; Chapter IV – cooperation between intermediaries and other subjects in the real estate market; Chapter V – final provisions (see Table 2).

Table 2. The professional Code for Real Estate Intermediaries of the National Chamber of Real Estate Management (Krajowa Izba Gospodarki Nieruchomościami – KIGN) – after deregulation

<p>Chapter 1 General principles, definitions</p>	<p>§ 1. The real estate agent of the KIGN should be guided by the principles of professional ethics. The rules of professional conduct of the intermediary arise from generally accepted moral and ethical standards.</p> <p>§ 2. The intermediary shall act in such a way as to protect the interests of the people, for whom intermediary services are provided, considering the principles of fair treatment of all parties to the transaction.</p> <p>§ 3. The intermediary should be loyal to the client and do not damage the mutual trust.</p>
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	<p>§ 4. For the purposes of this regulation "property" also means cooperative rights to property, the right to separate ownership of the premises of a cooperative, the expectation of those rights and the right arising from the concluded agreement with the developer to build a dwelling, utility, and single-family home.</p> <p>§ 5. The KIGN real estate agent operates in a professional, honest, objective and communicative way.</p> <p>§ 6. The KIGN real estate agent does his job carefully, competently without undue delay.</p> <p>§ 7. The KIGN real estate agent improves his skills and raises his professional qualifications, in particular through regular participation in education.</p> <p>§ 8. The KIGN real estate agent is obliged to possess liability insurance for damage caused in relation with the performance of agency activities.</p>
<p>Chapter 2 Professional prestige</p>	<p>§ 1. The guiding principle for all activities of the KIGN real estate agent is proper attention to the quality of these activities.</p> <p>§ 2. The KIGN real estate agent exhibits a high personal culture in dealing with the owner / users of the real estate, with the customers interested in the agent's services, as well as the courts, offices and institutions before which he appears.</p> <p>§ 3. The KIGN real estate agent operates in accordance with the law.</p> <p>§ 4. The KIGN real estate agent does not engage in activity that goes beyond his knowledge and professional competence, in particular those activities that are incompatible with the current legal and social norms.</p> <p>§ 5. The KIGN real estate agent participates in the work of the National Chamber of Real Estate Management, supports its activities, and by having a proper attitude contributes to the integration of intermediaries as well as ensures a high ranking of the profession.</p> <p>§ 6. The KIGN real estate agent does not act in a manner that undermines the interests of the entrepreneurs employing him. In particular, it is not allowed to transfer, disclose or use the enterprise's secret information.</p> <p>§ 7. The KIGN real estate agent continuously improves his qualifications and competences. The National Chamber of Real Estate Management recommends the completion of 16 hours of training per year.</p>
<p>Chapter 3 Customer relations</p>	<p>§ 1. The KIGN real estate agent is guided by tolerance and lack of prejudice towards ongoing cases.</p> <p>§ 2. The KIGN real estate agent does not charge any financial benefits beyond the remuneration resulting from the agreement.</p> <p>§ 3. The KIGN real estate agent exercises due diligence in order to obtain the best possible results for clients.</p> <p>§ 4. The KIGN real estate agent treats each contract individually and conscientiously.</p> <p>§ 5. All operations related to the real estate should be carried out by the KIGN real estate agent in accordance with the customer's request, as well as the terms of the agreement and the law.</p> <p>§ 6. The KIGN real estate agent provides proper information on the estimated price or rent of real estate, defines the rights and obligations of each party to the transaction clearly and transparently and ensure the safety of the transaction partners.</p>

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	<p>§ 7. The KIGN real estate agent cannot be party to a transaction for which agency activities are performed.</p> <p>§ 8. The KIGN real estate agent provides the customer all the information related to the contract in a communicative way, without undue delay.</p> <p>§ 9. The KIGN real estate agent does not hide any offers for the customer, and provides clear, comprehensive and not misleading information about the subject of mediation.</p> <p>§ 10. The KIGN real estate agent, when carrying out the contract, shall not order work, goods or services to be paid for by the customer without his knowledge and consent.</p> <p>§ 11. The KIGN real estate agent refrains from intrusive prompting customers to order services, and always reveals his profession status when dealing with customers, third parties and other intermediaries.</p> <p>§ 12. The KIGN real estate agent cares about the truthfulness of the information in their advertising and on the reliability of their execution.</p>
Chapter 4 Cooperation between intermediaries and other subjects in the real estate market	<p>§ 1. The KIGN real estate agent should ensure that relationships with others in the trade are based on the principles of fair competition, loyalty and respect.</p> <p>§ 2. The KIGN real estate agent abstain from behavior that may cause moral or material damage to any other intermediary.</p> <p>§ 3. The KIGN real estate agent avoids any conflicts with other agents, which could affect the interests of the client.</p> <p>§ 4. The KIGN real estate agent ensures that the conduct of his associates is consistent with the principles of ethics and in accordance with agreement concluded.</p> <p>§ 5. In case of conflicts, the KIGN real estate agent resolves them immediately, openly and objectively.</p> <p>§ 6. The KIGN real estate agent should also take care of the public good and support public administration dealing with real estate issues.</p> <p>§ 7. The KIGN real estate agent should take care of a high level of knowledge of their employees by their proper training, and should supervise the proper execution of their tasks.</p>
Chapter 5 Final provisions	<p>§ 1. The KIGN real estate agent not complying with the rules of professional conduct contained in this Code shall be liable to disciplinary action before the Court of Arbitration at the National Chamber of Real Estate Management.</p> <p>§ 2. This Code shall come into force on 15 June 2015.</p>

Source: www.kign.pl

The first chapter of the new Code of ethics for real estate agents, "General principles, definitions", directly relates professional ethics to generally accepted moral and ethical standards. This seems to be fully justified, as it would be difficult to accept the existence of professional ethics without the existence of ethics in general. When a professional would have a different view on ethics than, for example, his customers, this could lead to different types of frictions in the real estate market. An important element is defining the duties of conduct in such a way as to protect

the interests of persons for whom the intermediary performs professional activities with regard to the principle of equal and fair treatment of all parties to the transaction. This means that the agent protecting the interests of the person who ordered the service, should not act detrimental to the other party in the transaction (Karpiński 2007: 27-28).

The other rules in this chapter emphasize the need for an intermediary to show a loyal attitude towards the person for whom he performs activities, while maintaining due diligence and competence in his work. A very important principle is the intermediary's obligation to possess a liability insurance for damage caused in connection with the professional activities. This insurance is beneficial for both clients and intermediaries. The customer has a guarantee of compensation in case of failures, and the intermediary does not run the risk of large financial losses.

The second chapter on professional prestige includes the intermediary's obligation to act in accordance with applicable laws and regulations, considering proper quality of his services. In addition, the intermediary is obliged to refuse to perform mediation duties, which go beyond his knowledge and professional competence and would be contrary to applicable legal and social norms. Another ethical principle related to supporting the prestige of the profession concerns the prohibition of conduct by the intermediary that undermines the interests of entrepreneurs employing him. In particular, the transfer, disclosure or use of secret information is prohibited. In order to improve the prestige of the profession, professional organizations should be supported. Regional associations integrate professionals, and support cooperation. This not only creates opportunities for improvement of qualifications, but also supports professionalism (Karpiński 2007: 27-28). The prestige of the profession is a way to increase trust among (potential) customers, which can prevent many problems appearing due to the large information asymmetries in the real estate market.

The third chapter of the code of ethics of professional real estate intermediaries concerns customer relations. It is obliged to act with due diligence in order to obtain the best results, while treating each customer individually and conscientiously. No offer available on the market should be withheld from a customer, while clear, complete and not misleading information should be provided. Thus, one customer may not be treated worse for the sake of higher profits. Furthermore, the intermediary is obliged to analyze the legal status of the property on offer, and collect enough information in order to guarantee the safety of the transaction. The ethical code, where trust in and prestige of the profession is an important element, should provide incentives to do this. As a loss

of trust and prestige could lead to a loss of customers. Furthermore, satisfied customers may recommend the intermediary, which is of great importance in the face of increased competition due to the liberalization of the profession.

It is considered to be unethical when the intermediary demands financial remuneration in addition to the payment which is contractually agreed upon, or when he acts as one of the parties in a transaction, where he also offers intermediary services. Otherwise, his financial interest in the transaction itself may reduce the quality of the services for the customer.

Chapter four of the new code of ethics for real estate agents concerns cooperation between intermediaries and other entities in the real estate market. The relationship between intermediaries should be based on the principles of fair competition, loyalty and respect (Karpiński 2007: 28-29). Any moral or material damage to other intermediaries should be prevented. Thus, mutual deception in the field of information provision regarding real estate, future actions and the conditions of the transaction is unethical. This is important for the mentioned prestige and trust required for the functioning of the real estate market. It may in the short term be attractive to increase earnings by unethical behavior. However, when intermediaries cooperate on a long term base, such behavior not only may damage their reputation as an individual agent or as a group, but also reduce future profitable business opportunities.

The last entry of Chapter 4 concerning cooperation between intermediaries and other players in the real estate market emphasizes the importance of knowledge and training of the intermediary's employees. The intermediary should be taken responsible for unethical behavior by these employees, as well as their capability to execute a task properly. Not only should the employees be trained and educated in formal issues related to real estate transactions, leading to a higher quality of their services, but also be educated in the ethical aspects of the business. Important in this context is the awareness of the intermediaries that lower quality of service by their employees not only can damage business, but also damages the credibility of the intermediary himself.

The rules of professional conduct and standards of professional real estate agents adopted by the National Chamber of Real Estate Management do in fact not differ significantly from those in force until the end of December 2013. They are rather a continuation of the previous rules, which oblige to perform the job professionally and with professional dignity. Fair treatment of all parties to the transaction is required. Rules for cooperation with other agents apply and the elimination of

unacceptable practice is supported. The rules are a kind of guidelines that can be helpful in the development of normal relations between the customer, the agent another participants in the real estate market. The new ethical rules are formulated in the form of orders and prohibitions. Basically, the adopted principles do not constitute a proposal for new, special solutions, compared to the former ethical code.

However, the initiative of the National Chamber of Real Estate Management, leading to the establishment of a code of professional ethics of real estate intermediaries, underlines the commitment to maintain high professional standards, to be adequately prepared and ensure high-quality services.

3. Concluding remarks

The profession of real estate intermediary embraces a wide range of duties. As the interests of buyers and sellers on the market are different, empathy, communicative skills and high personal culture are important. Ethical standards are elementary because of the incentives for opportunistic behavior and rent-seeking due to the existence of large informational problems. These large informational problems regarding, among other things, the characteristics of real estate, legal aspects, etc., make knowledge, competence and experience important conditions for facilitating transactions that satisfy the customer of the intermediary. The intermediary is in fact responsible for the fate of the customer, and the ethical code is one instrument to support his accountability, as well as eliminating unethical behavior.

After the abolition of the legal provisions governing access to the profession of real estate agent, which came into effect on 1 January 2014, there were fears that the abolition of virtually all current requirements for the exercise of the profession would have a negative impact on real estate transactions. However, the self-regulating strength of the market should not be underestimated. While the real estate market is characterized by imperfections, due to the mentioned informational problems, strong regulation is not a guarantee for proper functioning of the market. When the government would have to enforce the rules, this would be costly. Associations and federations of intermediaries can prevent unethical behavior by creating an interest in cooperation. For example, cooperation between intermediaries in different segments of the real estate market, supporting each

other with finding clients. Or by way of exchange of professional information and experience, and the creation of prestige which may attract customers. They issue their own licenses, organize training programs, apprenticeship programs and keep records of unethical behavior. The entire system of education and certification relies on the mechanism that existed by the end of 2013. While, as shown, professional associations show that ethical standards can apply in a deregulated market, the effectiveness of the current system needs deeper research.

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Ustawa z 21 sierpnia 1997 r. o gospodarce nieruchomościami (Dz.U. z 1997 roku, Nr 115, poz. 741 z zm.)

Obrót nieruchomości a etyka zawodowa pośrednika po deregulacji zawodu

Streszczenie

Zgodnie z obowiązującymi do końca grudnia 2013 r. przepisami ustawy o gospodarce nieruchomościami pośrednik w obrocie nieruchomościami był zobowiązany do wykonywania czynności, zgodnie z zasadami wynikającymi z przepisów prawa i standardami zawodowymi, ze szczególną starannością właściwą dla zawodowego charakteru tych czynności oraz zasadami etyki zawodowej. Uchwalona 13 czerwca 2013 r. przez Sejm ustawa o zmianie ustaw regulujących wykonywanie niektórych zawodów zniosła, m.in. reglamentację zawodu pośrednika w obrocie nieruchomościami. Od 1 stycznia 2014 r. przestały obowiązywać praktycznie wszystkie dotychczasowe wymogi dotyczące pośrednika w obrocie nieruchomościami. Zniknął warunek posiadania licencji, odpowiedniego wykształcenia, odbycia praktyki, a także niekaralności. W kontekście uchwalonych zmian istotne zatem staje się pytanie jak rynek nieruchomości poradził sobie z przestrzeganiem prawa i standardów zawodowych oraz zasad etyki zawodowej. Celem opracowania jest przedstawienie propozycji nowych rozwiązań w zakresie standardów zawodowych pośredników będących odpowiedzią na zaistniałą sytuację na rynku nieruchomości oraz próba porównania wybranych, dotychczas obowiązujących zasad etyki zawodowej pośredników z nowo obowiązującymi.

Słowa kluczowe: pośrednik w obrocie nieruchomościami, etyka zawodowa, standardy zawodowe, obrót nieruchomościami, deregulacja zawodu

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Aleksandra PIASECKA